

Amendments to the Drawings:

Please substitute the attached formal drawing sheet (Fig. 3) for the drawing originally filed with the application.

REMARKS

This Reply is in response to the Office Action mailed on October 13, 2006 in which claims 22-31 were withdrawn and in which claims 1-21 and 32-40 were rejected. With this response, claims 5, 7-21, 32, 34, 36 and 40 are canceled; claims 1, 6, 33, 35, 37, 38, and 39 are amended; and claims 41-58 are added. Claims 1-4, 6, 33, 35, 37-39 and 41-58 are presented for reconsideration and allowance. Because claim 1 is believed to be generic to the previous non-elected species, upon allowance of claim 1, Applicants respectfully request reinstatement of previously withdrawn claims 22-27 which depend from claim 1.

I. Examiner Interview Summary

On January 11, 2006, a telephonic interview was held between Examiner Koczko and Applicant's attorney, Todd A. Rathe. The rejection of claims 6 and 33 based upon Leilde EP 0786596 was discussed. Examiner Koczko indicated that he may obtain a full translation of Leilde. If the Examiner does so, Applicants respectfully request that the Examiner provide Applicants with a copy of such a translation.

Although no specific agreement was reached, Applicants wish to thank Examiner Koczko for the opportunity to discuss the rejection.

II. Objection to the Specification

Page 2 of the Office Action objected to disclosure noting a missing serial number. In response, Paragraph [0021] is amended to add being now known serial number.

III. Objection to the Drawings

Page 2 of the Office Action objected to the drawings noting and incorrectly drawn lead line and an incorrect reference numeral in Figure 3. Figure 3 is amended to correct these deficiencies.

IV. Rejection of Claims 1-21 and 32-40 under 35 USC 112, First Paragraph

Page 3 of the Office Action rejected claims 1-21 and 32-40 under 35 USC 112, first paragraph as being non-enabling. In particular, the Office Action asserted that the disclosure does not specifically illustrate a drive system that is coupled to both the support and the occlusion. Claims 5, 7-21, 32, 34, 36 and 40 are canceled.

In response, the claims have been amended to now clarify that the drive system is coupled to one of the support and the occlusion. Applicants respectfully note that the claims, as amended, would still cover a pumping wherein the drive system is coupled to both the support and the occlusion since that the drive system would still be coupled to one of the support and of the occlusion. Claims 1-4, 6, 33, 35 and 37-39, as amended, overcome the rejection.

V. Rejection of Claims 1-5, 7, 8, 10, 12-15, 17, 18, 32, 33 and 39 under 35 USC 112, Second Paragraph

Page 4 of the Office Action rejected claims 1-5, 7, 8, 10, 12-15, 17, 18, 32, 33 and 39 under 35 USC 112, second paragraph as being incomplete for omitting essential elements. In particular, the Office Action noted that no tubes are recited in the claims.

Applicants respectfully request that the rejection of claims 1-5, 7, 8, 10, 12-15, 17, 18, 32, 33 and 39 be withdrawn. The preamble of such claims ends with the term "comprising" which is an open-ended term meaning that other elements, not specifically recited, may be part of the claimed apparatus. Many apparatus have a functional aspect in their name, but can not perform without one or more additional components. For example, a paint roller cannot roll paint without a paint absorbing cover. A vehicle cannot transport objects without fuel. However, such apparatus are commonly claimed without reciting a cover or fuel in the claims.

Moreover, to require one to claim each and every element necessary to make an apparatus functional would have no end. For example, if one were to claim a vehicle comprising a novel engine, such a requirement also require an applicant recite a transmission, tires, ignition, fuel tank and so on. This would not end here. For the transmission to function such a requirement

would further require the claim to recite each of the "essential" components of the transmission and so on and so on. In the present case, to require the claiming of a potentially replaceable consumable such as a tube would unduly limit the scope of the present application. Accordingly, Applicants request that the rejection of claims 1-5, 7, 8, 10, 12-15, 17, 18, 32, 33 and 39 be withdrawn.

VI. Rejection of Claims 11 and 38 under 35 USC 112, Second Paragraph

Page 4 of the Office Action rejected claims 11 and 38 under 35 USC 112, second paragraph, as being indefinite. In response, claim 11 is amended to recite a pumping to, providing antecedent basis for the later recited "the pumping tube". Claim 38 is amended to correctly depend from claim 37 as noted in the respectfully request that the rejection of claims 11 and 38 under 35 USC 112, second paragraph be withdrawn.

VII. Rejection of Claims 1-3, 5, 6, 33, 35, 37, 38 and 40 under 35 USC 102(b) Based upon Leilde

Page 5 of the Office Action rejected claims 1-3, 5, 6, 33, 35, 37, 38 and 40 under 35 USC 102(b) as being anticipated by Leilde EP 0786596. Claims 5 and 40 are canceled. Claims 1-3, 6, 33, 35, 37 and 38, as amended, overcome the rejection based upon Leilde.

A. Claim 1

Page 6 of the Office Indicated that claim 32 would be allowable if rewritten to overcome the rejections under 35 USC 112, a second paragraph and to include all of the limitations of the bass claim and any intervening claims. In response, claim 32 is canceled with its limitations incorporated into bass claim 1. Claim 31-32 are further amended to overcome the previously noted rejection under 35 USC 112, first paragraph. Accordingly, claim 1, as amended, is believed to be in condition for allowance. Claims 2, 3, 6 and 33 depend from claim 1 and overcome the rejection for the same reasons.

B. Claim 35

Page 6 of the Office Action indicated that claim 36 would be allowable if rewritten to overcome the rejections under 35 USC 112, second paragraph and to include all of the limitations of the base claim and any intervening claims. In response, claim 36 is canceled with its limitations incorporated into claim 35. Claim 35, as amended, is further believed to overcome the rejections under 35 USC 112. Accordingly, claim 35, as amended, overcomes the rejection based upon Leilde.

C. Claim 37

Claim 37, as amended, recite a method for pumping fluid through a tube. The method includes transmitting torque to one of a support and an occlusion surface to move at least one of the support and the occlusion service towards and away from the other of the support and the occlusion service between a tube compressing state in which the tube is compressed between occluding surfaces and the occlusion surface and a tube uncompressed state. Claim 37 further recites the step of resiliently biasing said one of the support and the occlusion surface such that the support is spaced from the occlusion surface by a distance greater than the diameter of the pumping tube. Support for this amendment to claim 37 may be found in at least Paragraph [0045] and originally filed claim 11. Thus, no new matter is believed to be added.

Leilde fails to disclose was only biasing one of the support in the occlusion surface such data to support is spaced from the occlusion surface by a distance greater than the diameter of the pumping tube. Although it may to be true that tube 5 of Leilde resiliently biases cam 7 away from rollers 30, the distance at which cam 7 is spaced from rollers 30 cannot exceed the diameter of a tube 5. In other words, tube 5 must remain in contact with both rollers 30 and cam 7 to resiliently bias cam 7. In contrast, Figure 3 of the present Application clearly illustrates the tube out of contact with at least one of roller 62 and occlusion 150. Accordingly, Claim 37, as amended, overcomes the rejection based upon Leilde. Claim 38 depends from claim 37 and overcomes the rejection for the same reasons.

VIII. Rejection of claim 34 under 35 USC 103(a) based upon Shibata and Leilde

Page 5 of the Office Action rejected claim 34 under 35 USC 103(a) as being accountable over Shibata et al. US Patent 6,557,987 in view of Leilde EP 0786596. Claim 34 is canceled, rendering the rejection moot.

IX. Added Claims

With this response, claims 41-58 are added. Claims 41-58 are believed to be patentably distinct over the prior art of record.

A. Claims 41-57

Page 6 of the Office Action indicated that claims 7-21 would be allowable if rewritten to overcome the rejections under 35 USC 112, second paragraph and include all of the limitations of the base claim and any intervening claims. In response, Claims 7-21 have been canceled and have been rewritten as added claims 41-55, with former claim 7 rewritten in independent form to include all of the limitations of former base claim 1 and former intervening claim 2. Such added claims are further believed to overcome the rejections under 35 USC 112.

Added claims 56 and 57 depend from claim 41 and are believed to be patentably distinct over the prior art of record for least the same reasons. Accordingly, claims 41-57 are presented for consideration and allowance.

B. Claim 58

Page 6 of the Office Action indicated that claim 4 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims and to overcome the rejection under 35 USC 112, second paragraph.

In response, claim 4 is rewritten in independent form as added claim 58 and includes all of the limitations of former base claim 1 and the former intervening claims 2 and 3. Applicants

respectfully note that added claim 58 further clarifies the axes about which the first and second arms pivot. Accordingly, claim 58 is presented for consideration and allowance.

X. Conclusion

After amending the claims as set forth above, claims 1-4, 6, 33, 35, 37-39 and 41-58 are presented for reconsideration and allowance. Because claim 1 is believed to be generic to the previous non-elected species, upon allowance of claim 1, Applicants respectfully request reinstatement of previously withdrawn claims 22-27 which depend from claim 1.

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 08-2025. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 08-2025. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 08-2025.

Respectfully submitted,

Date Jan. 16, 2007

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